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8 *Attorneys for Defendant*  
9 **DILLINGHAM & ASSOCIATES**

10 UNITED STATES DISTRICT COURT  
11 DISTRICT OF NEVADA  
12

13 MAXIMILIANO COUVILLIER III, on behalf  
14 of himself and all others similarly situated,

15 Plaintiff,

16 vs.

17 DILLINGHAM & ASSOCIATES,

18 Defendant.

CASE NO. 2:14-cv-00482-RCJ-NJK

**DEFENDANT DILLINGHAM &  
ASSOCIATES' ANSWER**

19  
20 Defendant Dillingham & Associates ("Defendant") for itself and no other defendant  
21 answers Plaintiff's Complaint for Damages Pursuant to the Fair Debt Collection Practices Act, 15  
22 U.S.C. 1692, Et Seq.; NRS 598 Et Seq., and NRS 41.600 Et Seq. [Doc. No. 1] (the "Complaint")  
23 filed on April 1, 2014, as follows:

24 **INTRODUCTION**

25 1. Answering Paragraph 1 of the Complaint, this answering Defendant is without  
26 sufficient knowledge or information necessary to form a belief as to the truth or falsity of the  
27 allegations set forth therein and upon said ground, denies the same.

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2. Answering Paragraph 2 of the Complaint, this answering Defendant denies each and every allegation contained therein.

3. Answering Paragraph 3 of the Complaint, this answering Defendant denies each and every allegation contained therein.

4. Answering Paragraph 4 of the Complaint, this answering Defendant denies each and every allegation contained therein.

5. Answering Paragraph 5 of the Complaint, this answering Defendant denies each and every allegation contained therein.

6. Answering Paragraph 6 of the Complaint, this answering Defendant denies each and every allegation contained therein.

7. Answering Paragraph 7 of the Complaint, this answering Defendant denies each and every allegation contained therein.

## JURISDICTION AND VENUE

8. Answering Paragraph 8 of the Complaint, this answering Defendant denies each and every allegation contained therein.

9. Answering Paragraph 9 of the Complaint, this answering Defendant denies each and every allegation contained therein.

10. Answering Paragraph 10 of the Complaint, this answering Defendant denies each and every allegation contained therein.

## PARTIES

11. Answering Paragraph 11 of the Complaint, this answering Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the allegations set forth therein and upon said ground, denies the same.

12. Answering Paragraph 12 of the Complaint, this answering Defendant denies each and every allegation contained therein.

13. Answering Paragraph 13 of the Complaint, this answering Defendant denies each and every allegation contained therein.

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## FACTUAL ALLEGATIONS

17. Answering Paragraph 17 of the Complaint, this answering Defendant denies each and every allegation contained therein.

## DEFENDANT'S LETTER TO PLAINTIFF

20. Answering Paragraph 20 of the Complaint, this answering Defendant is without sufficient knowledge or information necessary to form a belief as to the truth or falsity of the allegations set forth therein and upon said ground, denies the same.

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1           22.     Answering Paragraph 22 of the Complaint, this answering Defendant admits that a  
2 letter was mailed to Plaintiff dated February 6, 2014. As to the remaining allegations in Paragraph  
3 22, this answering Defendant is without sufficient knowledge or information necessary to form a  
4 belief as to the truth or falsity of the allegations set forth therein and upon said ground, denies the  
5 same.

6           23.     Answering Paragraph 23 of the Complaint, this answering Defendant admits that a  
7 letter was mailed to Plaintiff dated February 6, 2014. As to the remaining allegations in Paragraph  
8 23, this answering Defendant is without sufficient knowledge or information necessary to form a  
9 belief as to the truth or falsity of the allegations set forth therein and upon said ground, denies the  
10 same.

11          24.     Answering Paragraph 24 of the Complaint, this answering defendant states that the  
12 letter speaks for itself and that no response is required. To the extent a response may be required  
13 to the allegations in Paragraph 24, this answering Defendant denies that it violated the FDCPA or  
14 any other statute and is without sufficient knowledge or information necessary to further respond  
15 to Plaintiff's allegations therein and upon said ground, denies the same.

16          25.     Answering Paragraph 25 of the Complaint, this answering Defendant denies each  
17 and every allegation contained therein.

18          26.     Answering Paragraph 26 of the Complaint, this answering Defendant states that the  
19 referenced document speaks for itself and no response is required. To the extent a response may  
20 be required to the allegations in Paragraph 26, this answering Defendant denies that it violated the  
21 FDCPA or any other statute and is without sufficient knowledge or information necessary to  
22 further respond to Plaintiff's allegations therein and upon said ground, denies the same.

23          27.     Answering Paragraph 27 of the Complaint, this answering Defendant denies each  
24 and every allegation contained therein.

25          28.     Answering Paragraph 28 of the Complaint, this answering Defendant denies each  
26 and every allegation contained therein.

27          29.     Answering Paragraph 29 of the Complaint, this answering Defendant denies each  
28 and every allegation contained therein.

1           30.     Answering Paragraph 30 of the Complaint, this answering Defendant denies each  
2 and every allegation contained therein.

3           31.     Answering Paragraph 31 of the Complaint, this answering Defendant denies each  
4 and every allegation contained therein.

5           32.     Answering Paragraph 32 of the Complaint, this answering Defendant denies each  
6 and every allegation contained therein.

7           33.     Answering Paragraph 33 of the Complaint, this answering Defendant denies each  
8 and every allegation contained therein.

9           34.     Answering Paragraph 34 of the Complaint, this answering Defendant denies each  
10 and every allegation contained therein.

11                                   **CLASS ACTION ALLEGATIONS**

12           35.     Answering Paragraph 35 of the Complaint, this answering Defendant denies that it  
13 violated the FDCPA or any other statute. As to the remaining allegations in Paragraph 35, this  
14 answering Defendant is without sufficient knowledge or information necessary to form a belief as  
15 to the truth or falsity of those allegations and upon said ground, denies the same.

16           36.     Answering Paragraph 36 of the Complaint, this answering Defendant denies that it  
17 violated the FDCPA or any other statute. As to the remaining allegations in Paragraph 36, this  
18 answering Defendant is without sufficient knowledge or information necessary to form a belief as  
19 to the truth or falsity of those allegations and upon said ground, denies the same.

20           37.     Answering Paragraph 37 of the Complaint, this answering Defendant is without  
21 sufficient knowledge or information necessary to form a belief as to the truth or falsity of the  
22 allegations set forth therein and upon said ground, denies the same.

23           38.     Answering Paragraph 38 of the Complaint, this answering Defendant denies each  
24 and every allegation contained therein.

25           39.     Answering Paragraph 39 of the Complaint, this answering Defendant is without  
26 sufficient knowledge or information necessary to form a belief as to the truth or falsity of the  
27 allegations set forth therein and upon said ground, denies the same.

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1           40.     Answering Paragraph 40 of the Complaint, this answering Defendant denies each  
2 and every allegation contained therein.

3           41.     Answering Paragraph 41 of the Complaint, this answering Defendant denies each  
4 and every allegation contained therein.

5           42.     Answering Paragraph 42 of the Complaint, this answering Defendant denies each  
6 and every allegation contained therein.

7           43.     Answering Paragraph 43 of the Complaint, this answering Defendant denies each  
8 and every allegation contained therein.

9           44.     Answering Paragraph 44 of the Complaint, this answering Defendant denies each  
10 and every allegation contained therein.

11          45.     Answering Paragraph 45 of the Complaint, this answering Defendant denies each  
12 and every allegation contained therein.

13          46.     Answering Paragraph 46 of the Complaint, this answering Defendant denies each  
14 and every allegation contained therein.

15                               **FIRST CAUSE OF ACTION**  
16                               **THE FAIR DEBT COLLECTION PRACTICES ACT**  
                                  **15 U.S.C. §§ 1692-1692(P) (FDCPA)**

17          47.     Answering Paragraph 47 of the Complaint, this answering Defendant hereby refers  
18 to and incorporates by reference its responses to all preceding paragraphs as though fully set forth  
19 herein at length.

20          48.     Answering Paragraph 48 of the Complaint, this answering Defendant denies each  
21 and every allegation contained therein.

22          49.     Answering Paragraph 49 of the Complaint, this answering Defendant denies each  
23 and every allegation therein, denies that it violated the FDCPA or any other statute, and further  
24 denies that Plaintiff is entitled to any damages, statutory or otherwise.

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**SECOND CAUSE OF ACTION  
VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT  
NRS 598 ET SEQ. (NDTPA), CONSTITUTING "CONSUMER FRAUD"  
UNDER NRS 41.600 ET SEQ.**

50. Answering Paragraph 50 of the Complaint, this answering Defendant hereby refers to and incorporates by reference its responses to all preceding paragraphs as though fully set forth herein at length.

51. Answering Paragraph 51 of the Complaint, this answering Defendant denies each and every allegation therein and further denies that it violated the NDTPA or any other statute.

52. Answering Paragraph 52 of the Complaint, this answering Defendant denies each and every allegation therein, denies that it violated the NDTPA or any other statute, and further denies that Plaintiff is entitled to any damages, statutory or otherwise.

53. Answering Paragraph 53 of the Complaint, this answering Defendant denies each and every allegation therein, denies that it violated the NDTPA or any other statute, and further denies that Plaintiff is entitled to any damages, statutory or otherwise.

**PRAYER FOR RELIEF**

This answering Defendant denies each and every bullet point and paragraph of Plaintiff's Prayer for Relief.

**TRIAL BY JURY**

54. Answering Paragraph 54 of the Complaint, this answering Defendant states that the allegations are a matter of form and no response is required.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, Defendant alleges that the Complaint, and each and every purported cause of action contained therein, fails to state complaints sufficient to constitute a cause of action.

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1 **SECOND AFFIRMATIVE DEFENSE**

2 As a separate, affirmative defense, this answering Defendant alleges that the alleged  
3 actions of this answering Defendant were proper and did not violate any provisions of 15 U.S.C.  
4 1692, *et seq.* or the Nevada Revised Statutes.

5 **THIRD AFFIRMATIVE DEFENSE**

6 As a separate, affirmative defense, this answering Defendant alleges that at all times  
7 mentioned in the Complaint, this answering Defendant acted lawfully and within its legal rights,  
8 with a good faith belief in the exercise of that right, and in the furtherance of a legitimate business  
9 purpose. Further, this answering Defendant acted in good faith in the honest belief that the acts,  
10 conduct and communications, if any, of this answering Defendant were justified under the  
11 circumstances based on information reasonably available to this answering Defendant.

12 **FOURTH AFFIRMATIVE DEFENSE**

13 As a separate and affirmative defense, this answering Defendant alleges that the alleged  
14 actions of this answering Defendant were not accompanied by actual malice, intent, or ill will.

15 **FIFTH AFFIRMATIVE DEFENSE**

16 As a separate, affirmative defense, this answering Defendant alleges that this answering  
17 Defendant' conduct, communications and actions, if any, were privileged.

18 **SIXTH AFFIRMATIVE DEFENSE**

19 As a separate, affirmative defense, assuming *arguendo* that this answering Defendant  
20 violated a statute alleged in the Complaint, which presupposition this answering Defendant denies,  
21 such violation was not intentional and resulted from a bona fide error, notwithstanding the  
22 maintenance of procedures reasonably adapted to avoid any such error.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 As a separate, affirmative defense, this answering Defendant alleges that Plaintiff is barred  
25 from any recovery against this answering Defendant by the doctrine of laches and/or the statute of  
26 limitations.

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**EIGHTH AFFIRMATIVE DEFENSE**

As a separate affirmative defense, this answering Defendant alleges that it, at all times alleged in the Complaint, maintained reasonable procedures created to prevent any type of intentional violations of the FDCPA or the NDTPA.

**NINTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that if Plaintiff or any purported class of persons was damaged in any sum or sums alleged, which this answering Defendant denies, then Plaintiff's damages are limited by 15 U.S.C. § 1692(k)(a)(1), § 1692(k)(a)(2)(A), § 1692(k)(a)(3) and 15 U.S.C. § 1692(k)(b)(1).

**TENTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that this answering Defendant's conduct, communications and actions, if any, were privileged pursuant to 15 U.S.C. § 1692(k)(c).

**ELEVENTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that the alleged actions of this answering Defendant were proper and did not violate any provisions of the FDCPA, NDTPA, or any other applicable state statute or laws.

**TWELFTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that its actions were privileged pursuant to Federal and State common law.

**THIRTEENTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that if Plaintiff or any purported class of persons was damaged in any sum or sums alleged, which this answering Defendant denies, Plaintiff failed to mitigate damages.

**FOURTEENTH AFFIRMATIVE DEFENSE**

As a separate, affirmative defense, this answering Defendant alleges that if Plaintiff or any purported class of persons was damaged in any sum or sums alleged, which this answering Defendant denies, this answering Defendant's alleged acts or omissions were not a proximate

1 cause of said damages.

2 **FIFTEENTH AFFIRMATIVE DEFENSE**

3 As a separate, affirmative defense, this answering Defendant alleges that it, at all times  
4 alleged in the Complaint, maintained reasonable procedures created to prevent any type of  
5 intentional violations of the FDCPA or NDTPA.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

7 As a separate, affirmative defense, Plaintiff's and any purported class of person's alleged  
8 losses, if any, are speculative and/or uncertain, and therefore, not compensable.

9 **SEVENTEETH AFFIRMATIVE DEFENSE**

10 As a separate, affirmative defense, Plaintiff's Complaint fails as a matter of law  
11 because one or more of the typicality, numerosity, commonality, and adequate representation  
12 elements of Plaintiff's purported class are lacking.

13 **EIGHTEENTH AFFIRMATIVE DEFENSE**

14 Plaintiff's Complaint against this answering Defendant is barred under the doctrine of  
15 unclean hands.

16 **NINETEENTH AFFIRMATIVE DEFENSE**

17 As a separate, affirmative defense, this answering Defendant hereby incorporate by  
18 reference those affirmative defenses enumerated in Rule 8 of the Federal Rules of Civil Procedure  
19 as if fully set forth herein. In the event further investigation or discovery reveals the applicability  
20 of any such defenses, this answering Defendant reserve the right to seek leave of court to amend  
21 its Answer to specifically assert any such defense(s). Such defenses are herein incorporated by  
22 reference for the specific purpose of not waiving any such defense.

23 **TWENTIETH AFFIRMATIVE DEFENSE**

24 As a separate, affirmative defense, pursuant to Rule 11 of the Federal Rules of Civil  
25 Procedure, all possible affirmative defenses may not have been alleged herein insofar as sufficient  
26 facts were not available after reasonable inquiry upon the filing of this answering Defendant's  
27 Answer, and, therefore, this answering Defendant reserve the right to amend its Answer to allege  
28 additional affirmative defenses if subsequent investigation and/or discovery so warrants.

**PRAYER**

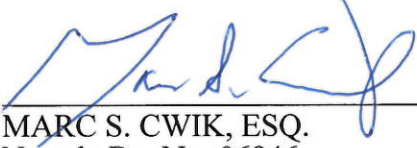
Wherefore, this answering Defendant prays as follows:

1. That Plaintiff and any purported class of persons take nothing by way of the Complaint on file herein;
2. That this Court enter judgment in favor of this answering Defendant as to each and every cause of action;
3. That to the extent allowed by law, this Court award this answering Defendant its attorney's fees and costs; and
4. Such further and other relief as the Court deems just and appropriate in the premises.

DATED this 6<sup>th</sup> day of August, 2014.

LEWIS BRISBOIS BISGAARD & SMITH LLP

By

  
\_\_\_\_\_  
MARC S. CWIK, ESQ.  
Nevada Bar No. 06946  
STEPHEN H. TURNER, ESQ.  
California Bar No. 89627 (*Admitted pro hac vice*)  
KIM D. PRICE, ESQ.  
Nevada Bar No.: 07873  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, Nevada 89118  
*Attorneys for Defendant*  
DILLINGHAM & ASSOCIATES

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Fed. R. Civ. P. 5(b), I hereby certify that I am an employee of LEWIS  
3 BRISBOIS BISGAARD & SMITH LLP and that on this 6<sup>th</sup> day of August, 2014, I did cause a  
4 true and correct copy of the foregoing **DEFENDANT DILLINGHAM & ASSOCIATES'**  
5 **ANSWER** to be served via the CM/ECF filing system to all parties on the service list.

6

<i>Attorney</i>	<i>Party</i>	<i>Phone/Fax</i>
Danny J. Horen, Esq. Kazerouni Law Group, APC 7854 West Sahara Avenue Las Vegas, NV 89117	Attorneys for Plaintiff	(800) 400-6808 Ext. 7 (800) 520-5523 Fax

10  
11 By 

12 An Employee of  
13 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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